Colgate-Palmolive Company *and* Local 15, International Chemical Workers Union, AFL–CIO. Case 9–CA–32158

April 23, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On September 13, 1995, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified, and to adopt the recommended Order as modified and set forth in full below.[3]

The judge found that the issue of the Respondent's installation and use of hidden surveillance cameras in the workplace is a mandatory subject of bargaining, and that the Union has a statutory right to bargain over the installation and continued use of these surveillance cameras.[4] We agree.

In *Ford Motor Co. v. NLRB*, the Supreme Court described mandatory subjects of bargaining as such matters that are "plainly germane to the 'working environment'" and "not among those 'managerial decisions, which lie at the core of entrepreneurial control.'"[5] As the judge found, the installation of surveillance cameras is both germane to the working environment, and outside the scope of managerial decisions lying at the core of entrepreneurial control.

As to the first factor—germane to the working environment—the installation of surveillance cameras is analogous to physical examinations,[6] drug/alcohol testing requirements,[7] and polygraph testing,[8] all of which the Board has found to be mandatory subjects of bargaining. They are all investigatory tools or methods used by an employer to ascertain whether any of its employees has engaged in misconduct.

The Respondent implemented the installation and use of surveillance cameras because of an increase in workplace theft and other suspected employee misconduct in the facility, such as reports of employees sleeping instead of working. The Respondent acknowledges that employees caught involved in theft and/or other misconduct are subject to discipline, including discharge. Accordingly, the installation and use of surveillance cameras has the potential to affect the continued employment of employees whose actions are being monitored.

Further, as the judge finds, the use of surveillance cameras in the restroom and fitness center raises privacy concerns which add to the potential effect upon employees. We agree that these areas are part of the work environment and that the use of hidden cameras in these areas raises privacy concerns which impinged upon the employees' working conditions. The use of cameras in these or similar circumstances is unquestionably germane to the working environment.

With regard to the second criterion, we agree with the judge that the decision is not a managerial decision that lies at the core of entrepreneurial control. In discussing this issue in *Ford Motor Co.*, supra, the Court relied on Justice Stewart's concurring opinion in *Fibreboard Corp.*,[9] in which he states that "[d]ecisions concerning the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment . . . those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from that area."

The installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinges directly on employment security. It is a change in the Respondent's methods

[1] In its exceptions, the Respondent relies on *Quazite Corp.*, 315 NLRB 1068 (1994), to support its position that it did not violate the Act by installing surveillance cameras in the restroom of its facility. The Respondent correctly noted that no exceptions were filed to that finding by the judge. It is a well-established practice of the Board to adopt an administrative law judge's findings to which no exceptions are filed. Findings adopted under such circumstances are not, however, considered precedent for any other case. *Dallas Times Herald*, 315 NLRB 700 (1994); and *Anniston Yarn Mills*, 103 NLRB 1495 (1953).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the judge's recommended Order in accordance with our recent decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] In adopting the judge's finding that the Union has a statutory right to bargain over the Respondent's installation and use of surveillance cameras, we do not rely on any suggestion by the judge that the Union's statutory bargaining rights are dependent on its "long standing bargaining relationship" with the Respondent. Even if the Union were newly elected to represent the Respondent's employees, it would have the same bargaining rights.

[5] 441 U.S. 488, 498 (1979), quoting from *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 222–223 (1964) (Stewart, J., concurring).

[6] *Lockheed Shipbuilding Co.*, 273 NLRB 171, 177 (1984); and *LeRoy Machine Co.*, 147 NLRB 1431, 1432, 1438–1439 (1964).

[7] *Johnson-Bateman Co.*, 295 NLRB 180, 182–184 (1989).

[8] *Austin-Berryhill, Inc.*, 246 NLRB 1139 (1979); and *Medicenter, Mid-South Hospital*, 221 NLRB 670 (1975).

[9] 379 U.S. at 223.

used to reduce workplace theft or detect other suspected employee misconduct with serious implications for its employees' job security, which in no way touches on the discretionary "core of entrepreneurial control."[10]

What we say here today, of course, has no bearing upon the content of any agreement or arrangement that may emerge from collective bargaining. Nor does it address the employer's establishment of practices on the subject matter subsequent to having bargained to impasse. It is the duty to bargain and only the duty to bargain that is involved here.[11]

We agree further with the judge that the Union did not waive its statutory right to demand bargaining over the continued, future installation of surveillance cameras. The complaint asserts that on August 16, 1994, the Union requested bargaining about the subject of surveillance camera installation in the Respondent's facility and that the Respondent failed, since that date, to bargain with the Union about that issue.[12] The Respondent argues that it had no obligation to bargain with the Union because it had an established past practice of using surveillance cameras in the workplace, and because the Union had waived its right to bargain. The alleged unlawful conduct here is limited to the Respondent's refusal to honor the Union's request to bargain about the future use of surveillance cameras in the workplace. The Board has held that a union's acquiescence in an employer's past actions on a particular subject does not, without more, constitute a waiver of the right to bargain.[13] Further, there is no contention that the Union otherwise waived its statutory bargaining rights.[14] Therefore, we find that the Union did not waive bargaining over the future installation of surveillance cameras.

Accordingly, we affirm the judge's finding that the Union has the statutory right to engage in collective bargaining over the installation and continued use of surveillance cameras, including the circumstances under which the cameras will be activated, the general areas in which they may be placed, and how affected employees will be disciplined if improper conduct is observed. We also affirm the judge's conclusion that the Respondent's failure and refusal to bargain with the Union after its bargaining demand letter of August 16, 1994, violated Section 8(a)(1) and (5) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Colgate-Palmolive Company, Jeffersonville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 15, International Chemical Workers Union, AFL–CIO with respect to the installation and use of surveillance cameras and other mandatory subjects of bargaining.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive bargaining representative of the Respondent's employees with respect to the installation and use of surveillance cameras and other mandatory subjects of bargaining.

(b) Within 14 days after the service by the Region, post at its facility in Jeffersonville, Indiana, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of

[10] 221 NLRB at 676. The Respondent urges that bargaining before a hidden camera is actually installed would defeat the very purpose of the camera. The very existence of secret cameras, however, is a term and condition of employment, and is thus a legitimate concern for the employees' bargaining representative. Thus, the placing of cameras, and the extent to which they will be secret or hidden, if at all, is a proper subject of negotiations between the Respondent and the Union. Concededly, the Respondent also has a legitimate concern. However, bargaining about hidden cameras can embrace a host of matters other than mere location. And, even as to location, mutual accommodations can and should be negotiated. The vice in the instant case was the Respondent's refusal to bargain.

[11] In its brief, the Respondent relies on *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), to argue that the burden placed on the Company's ability to run its business is not outweighed by the benefits of bargaining regarding the installation of surveillance cameras in the workplace. However, as we have already found, the Respondent's decision to install surveillance cameras does not involve a change in the basic direction or scope of its business. Rather, it is the type of management decision that is "almost exclusively 'an aspect of the relationship'" between the employer and employees and, as to such decisions, there is an obligation to bargain. Id. at 677. The decision to install surveillance cameras is, therefore, not subject to the balancing test urged by the Respondent.

[12] The judge makes various findings indicating that the Respondent made unilateral changes. There is, however, no allegation that the Respondent acted unlawfully by making unilateral changes. Therefore, we do not adopt the judge's finding in this regard.

[13] *Johnson-Bateman Co.*, supra at 187–188.

[14] Id.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with Local 15, International Chemical Workers Union, AFL–CIO over the installation and use of surveillance cameras within our facility and other mandatory subjects of bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union as the exclusive bargaining representative of our employees with respect to the installation and use of surveillance cameras within our facility and other mandatory subjects of bargaining.

COLGATE-PALMOLIVE COMPANY

Julius U. Emetu, Esq., for the General Counsel.
Raymond C. Haley III, Esq. and *Carole C. Desposito, Esq.*, of Louisville, Kentucky, for the Respondent.
Charles D. Chapman, Esq., of Clarksville, Indiana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Louisville, Kentucky, on May 2, 1995. Subsequently, briefs were filed by the General Counsel and the Respondent. The proceeding is based on a charge filed September 2, 1994,[1] by Local 15, International Chemical Workers Union, AFL–CIO. The Regional Director's complaint dated October 13, alleges that Respondent, Colgate-Palmolive Company, violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain with the Union about the use of internal surveillance cameras.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the manufacture and distribution of a variety of household and personal care products from facilities located in Jeffersonville, Indiana. It annually ships goods valued $50,000 from this location to points outside Indiana, and it admits that at all times material, is has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent's Jeffersonville facility employs approximately 750 hourly or regular employees and the Respondent and the Union have had a collective-bargaining relationship for over 20 years. Robert Blais is director of manufacturing, Joyce G. Albright is human resources manager, and Leslie Greathouse is manager of labor relations. Marvin Roy Dick is a retiree who was president of the Local Union between March 1989 and March 1993, when Charles Wyzard succeeded him as president and Ryan Compton became vice president. Charles D. Chapman is the vice president of the International Union.

Allan Engle is employed in Respondent's shipping department. On July 11, 1994, he was assigned to cleaning duties in Respondent's building 2 (which houses administrative offices) and while he was in the second-floor restrooms, he looked up and observed a camera about 6 to 8 feet away in the air-vent angled toward him. Engle, who testified that he had never seen any surveillance camera inside the plant prior to that day, brought it to the attention of three other unit employees, including Union Steward Luther Hall, who then observed the camera.

Hall went to the nearby union hall and advised Compton (who was filling in for the union president, Wyzard, who was on vacation). Compton, who also had never before seen any surveillance cameras inside the facility, went with Hall and observed the camera still placed in the air vent. He returned to the Union and phoned International Vice President Chapman, who advised him to send a letter to Respondent protesting the placement of the camera and to file a grievance.

On July 12, Engle told Wyzard about the camera and went with Wizard to see it but discovered that the camera had been removed. On July 15, Albright, Respondent's human resources manager, saw Wyzard and invited him into her office. During their conversation, Albright asked Wyzard if he had heard about a camera which was discovered at the sani-

[1] All dates are in 1994 unless otherwise indicated.

tation department restroom and told Wyzard that Respondent had reason to believe that theft was in progress and that Respondent's legal counsel advised that her she could place a camera in the employee's restroom. Albright stated that once the camera was discovered and the Union's members became irate, the camera was immediately taken down. Wyzard testified that he told Albright that Respondent could have accomplished its goal by a less intrusive means and that the Union did not approve of the Respondent invading employees' privacy. Wyzard contacted Chapman again and Chapman advised him that he would draft a letter for Wyzard to send to Respondent. That letter, dated August 1, notes "that on or about July 11, bargaining members has observed a hidden camera in men's restroom and advised Respondent that it was not isolated, that some other cameras were found in the employees' exercise room," and that the Union had raised this issue at least twice.

A grievance was filed on August 1 and on August 3, the parties met on a number of grievances. Respondent was represented by Blais and Greathouse. The Union was represented by Compton and Wyzard. During the grievance hearing, Respondent's representatives took the position that it has the absolute right to install internal surveillance cameras whenever it suspects theft or impairment of its property. Respondent also informed the Union during that grievance meeting that the camera in the restroom was removed immediately on discovery and that any violation of the contract was remedied.

On August 4, Respondent sent a letter to the Union which advised the Union that internal surveillance cameras are either in plain view of all employees or from time to time "strategically placed in other areas in response to reasonably suspected misconduct."

On August 16, the Union sent a letter (hand delivered and signed by Wyzard) to Respondent demanding to bargain over the subject of cameras within the plant. The Respondent made no response to the latter and on September 2 the Union filed the charge involved in this proceeding.

Albright testified that she did not respond to the August 16 letter, because she and Wyzard had discussed hidden camera use several times between July and the August 16 letter, the grievance meeting had been held, and Respondent's position had always been communicated to the Union. Also, as an NLRB charge was then pending on the same issue,[2] Albright testified: "I believed it was the same issue, there was nothing else presented, so in—in my opinion, it was just another letter addressing the same issue."

III. DISCUSSION

The Respondent contends that its use of surveillance cameras is not a mandatory subject of bargaining, that the Union has waived any right to bargain over this subject and that it otherwise has satisfied any obligation to bargain over the subject which may have existed.

In support of its contentions, the Respondent describes that it has cameras located off plant property in plain view that survey the plant premises (outside); cameras in plain view located on plant property, outside plant buildings, that survey plant premises (internal exterior); cameras located inside plant buildings, in plain view (internal interior); and cameras located inside plant buildings, not in plain view (hidden), and points out that it presently utilizes 17 outside and internal exterior cameras that survey activity on company property. These cameras have been in place since 1982 and employees are aware of their presence. Images from these cameras (with time-lapsed recordings over 72-hour periods), it has several video cameras systems installed in plain view in interior building spaces within the plant (internal interior). Two internal interior cameras monitor activity in cleanser work areas, two monitor the maintenance office in 47 building, and two monitor the storeroom in 47 building. The Union has never sought to bargain over any of these camera installations, the monitoring thereof or any other aspect of their utilization.

Since 1990, 11 hidden cameras have been installed due to thefts or other suspected misconduct within the plant. The first installation monitored a manager's office in 34 building and, when an employee discovered the camera, it was deactivated shortly after its installation.

The next camera was installed in the plant's administrative offices due to complaints of theft of money from a coffee and snack "kitty." No members of the bargaining unit work in that area, and the camera has since been removed.

A third camera was installed in 1991 to monitor an overhead door (that is not a proper exit from the building), that exited 30 building into a parking lot. Terry Weisberg, a former bargaining committeeman for the Union, later told a supervisor that he had discovered the camera. The camera remained in place and the Union took no action.

A camera was installed in the plant's fitness center on January 16, 1993, when the Respondent believed sanitation employees were sleeping there. This camera was active for approximately 1 month and was discovered by unit employees 6 months after its deactivation, and it was removed after the union president asked Greathouse about the camera.

Greathouse also testified that in the spring of 1994, Denny Elliott, a union bargaining committeeman at the time, pointed out a hidden camera to him in a hallway emergency light (the camera monitored an area near the plant director and human resources offices), and that no requests to bargain were made. It also points out that Union President Wyzard reviewed minutes of meetings that occurred prior to his taking office that reflected that the Union's previous president told the union membership at a prior meeting of the Company's use of hidden surveillance cameras.

A. *Mandatory Subjects of Bargaining*

Section 8(a)(5) of the Act, in conjunction with Section 8(d), essentially mandate employers to bargain in good faith about wages, hours, and other terms and conditions of employment. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 348–349 (1958), and it is an unfair labor practice for an employer whose employees are represented for collective-bargaining purposes to make changes in mandatory subjects of bargaining without first providing the designated collective-bargaining representative with an opportunity to bargain with the employer about such proposed changes. *NLRB v. Katz*, 369 U.S. 736 (1962).

In deciding what matters fall within the pervue of mandatory bargaining subjects, the Board has focused exclusively on those matters that are germane to the working environ-

[2] On August 2 the Union filed a charge in Case 9–CA–32050 over the installation of the hidden camera. This charge was investigated and dismissed by the Regional Director on September 16.

ment and have the potential to affect the job security of employees, see *Johnson-Bateman Co.*, 295 NLRB 180 (1989), where the Board stated that "the employer's newly imposed requirement of drug/alcohol testing and physical examination for employees who require medical treatment for work injuries is a mandatory subject of bargaining" and cited *Ford Motor Co. v. NLRB*, 441 U.S. 488 (1979), and *Medicenter, Mid-South Hospital*, 221 NLRB 670 (1975), where the employer unilaterally instituted polygraph testing after certain acts of vandalism occurred.

Here, the Respondent began installing the hidden surveillance cameras because of increasing number of thefts in the plant, as well as to catch employees sleeping on the job. This is different than its past use of visable camera installations and its action is much more than a mere extension of a past practice.

The location of the two principal hidden cameras, however, adds another element to the situation and add to the potential effect on employees because the placement of hidden cameras in a restroom and fitness center clearly raise a concern over an individual's privacy and intrudes into employee's personal and private lives, even if it occurs on what is nominally company property.

The Union and employees were aware of various unhidden surveillance cameras as well, apparently, of one hidden camera in a hall area in the administrative offices (where unit employee's would not visit regularly except for cleaning duties). They were not aware of the hidden cameras on other areas unless they were fortuously discovered, and I find that the placement and location of hidden cameras is plainly germane to the working environment. Here, the Respondent makes representations that it made effort to aim the restroom camera in such a way that it would avoid unwarranted invasion of privacy, and I find that this is an effective acknowledgment that it took an action germane to the working environment. I also find that its surreptitious and unilateral actions are more closely akin to conditions of employment then to a managerial decision lying at the core of entrepreneurial control.

The right to investigate employee responsibility for theft or violation of company policies itself is not challenged; however, the Employer's unilateral change in its method of using surveillance cameras makes its a mandatory subject of bargaining, because it effects the privacy rights of employees and has the potential to affect the continued employment of employees who become concerned that their every action is subject to hidden surveillance or who become subject to discipline. I also find that any burden on the Company to bargain in advance of the event (rather than after a grievance) is slight and the effect on its ability to run its business is not shown to be meaningful or such that it would outweigh the rights of employees and the mutual benefits of collective bargaining.[3]

Here, the parties have a longstanding collective-bargaining relationship and under the circumstances, I find that this issue is a mandatory subject of bargaining and that the Union has the statutory right to bargain over the installation and continued use of these surveillance cameras, including the circumstances under which they would be activated, the general areas they could be placed and how the effected employees would be disciplined if improper conduct is observed.

[3] The perfunctory assertion that it would be seriously impaired in timeliness and ability to investigate theft or other misconduct is speculative and does not recognize that appropriate protective procedures and accommodations mutual could be negotiated.

B. *Waiver*

As cited by the Respondent, the Board, in *E. I. du Pont & Co.*, 301 NLRB 155 (1991), stated:

> It is well established that is incumbent upon a union which has notice of an employer's proposed change in terms and conditions of employment to timely request bargaining in order to preserve its right to bargain on that subject. The union cannot be content with merely protesting the action or filing an unfair labor practice charge over the matter. [*Citizens National Bank*, 245 NLRB 389, 390 (1979), affd. 644 F.2d 39 (D.C. Cir. 1981).]

The Respondent appears to rely on the information that on at least three past occasions the Union became aware of hidden surveillance cameras and did nothing or nothing more than protest or present a grievance and did not, on these occasions demand bargaining over the company "installation" of such cameras.

Here, I find that the casual comment by a union committeeman about a possible hidden camera in the hallway of an administrative area (that monitor's the entrance to the plant director's office), and the equally casual comment of a one-time member of the Union's bargaining committee to the Respondent's utilities coordinator (who has the responsibility for installation of surveillance cameras), who announced that he knew the Company had a camera looking at the door to the outside, does not constitute a showing that the Union had notice of actual hidden surveillance cameras on these occasions. Labor Relations Manager Greathouse testified that (when the hallway camera was point out to him by the employee); "I didn't confirm or deny, I just smiled and walked away." No acknowledgment was made of the other camera and what is left is not noticed but unconfirmed speculation by two employees that they saw what appeared to be a camera lens and I find that the failure of the Union to act on independent speculation of its members does not constitute a deliberate or clear and unmistakable waiver of its right to bargain, see *Porta-King Building Systems v. NLRB*, 14 F.3d 1258, 1263 (8th Cir. 1994).

The fitness center camera[4] did generate a union complaint and acknowledgment on the part of the Company, but there was no notice followed by union inaction that would indicate a willingness by the Union to permit this type of unilateral action. Here, the actual camera had been deactivated or removed well before other elements of the installation was discovered, and I find that the Union reasonably could not be expected to demand bargaining on this occasion when Union President Dick's inquiry was answered by Labor Relations Manager Greathouse's admission that there had been a camera installed, that it had not been used for several months, and that it would be removed. Again, although the Union's leadership changed shortly after this occurred and incoming

[4] The camera itself had already been removed when employees discovered what was apparently the cable for the installation.

President Wyzard was made aware of the incident I find no probative evidence that he was notified that the company had installed or would unilaterally install other hidden cameras.[5]

The mere fact that the Union did not pursue a right to bargain over the hidden camera in the fitness center does not preclude the Union from effectively demanding to bargain over all future actions and the Union's asserted acquiescence in a previous unilateral change by its acceptance of the Respondent's assurances that the situation had been remedied does not operate as a waiver of its right to bargain over such changes for all time. See *Owens-Corning Fiberglas*, 282 NLRB 609 (1987). Moreover, the Board will not likely find a waiver of statutory rights, *Rockwell International Corp.*, 260 NLRB 1346, 1347 (1982), and, as there is no showing here that the matter at issue has been fully discussed and consciously explored or that the Union has consciously yielded or unmistakably waived its interest, I find that the Union acted with due dilligence and that no waiver exist in the present case.

C. *Satisfaction of the Bargaining Obligation*

Here, the Respondent points out that each time a union representative brought a hidden camera to the attention of, or discussed hidden cameras, with management, the Company responded. Specifically, when an employee discovered the fitness center camera, Dick (then union president), asked Greathouse, about it. Greathouse responded to the union president's concern by telling him the reason for the camera installation, that it had been deactivated, and that the Company would remove it. Human Resources Manager Albright also "discussed" the fitness center camera during her weekly meetings with successor President Wyzard, and assertedly told him the Company to planned to continue using hidden cameras for probable cause incidents. Albright and Wyzard also discussed the reasons for, and limited placement of, the restroom camera during some of the their weekly meetings in July and August and at the third-step grievance meeting the Company answered all of the Union's questions regarding the restroom camera, and asserted its intention to use hidden cameras in the future if necessary. Albright also responded to the Union's letter of August 1 on August 4, by stating an assurance that no employee's privacy was violated and that it intended to continue using surveillance cameras whenever it has reasonable cause. She also refers to the Union's "ongoing complaint concerning exterior facility surveillance cameras" and then specifically denies the Union's demand for a list of camera locations and then rejects a Union "proposal" for future notification on placement of surveillance cameras.

This letter, which essentially rejected the Union's demands or proposals, also basically reiterated the Company's status quo position and led to the Union's letter of August 16 which specifically stated that the Union "hereby respectfully demand to bargain over the subject of cameras within the plant."

The Respondent admittedly did not respond to this specific bargaining demand and the record otherwise does not support a finding that its various earlier responses to the Union's expressed concerns and attempts to obtain some recourse somehow satisfies its bargaining obligation. The mere act of unilaterally responding to a question or a concern is not the same as bargaining. It can only be one part of a prelude to the collective act of true bargaining which entails give and take negotiating and coming to terms. Here, the Respondent merely rejected the Union's concerns and it did not engage in collective bargaining in any sense of the term that could be considered to satisfy its obligation under Section 8(a)(5) of the Act.

The Respondent has flouted its bargaining obligation by taking unilateral action regarding hidden surveillance cameras and then, at the 11th hour if discovered, relenting and rescinding its unilateral action in order to effectively preclude that pursuit of any meaningful, collective exchange. I find that this course of action does not satisfy the bargaining obligation and I conclude that the General Counsel has shown that the Respondent's conduct in this respect is in violation of Section 8(a)(5) of the Act, as alleged.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent's use of hidden surveillance cameras is a mandatory subject of bargaining and the Union has not waived its right to bargain over this subject.
4. By failing and refusing to respond to and bargain with the Union after its bargaining demand letter of August 16, 1994, the Respondent has violated Section 8(a)(5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

The Respondent having unlawfully failed and refused to bargain with the Union over the subject of surveillance cameras with its plant at Jeffersonville, Indiana, it shall be ordered to meet and bargain collectively with the Union in good faith concerning conditions of employment related to its use of surveillance cameras.

Otherwise it is not considered to be necessary that a broad order be issued.

[Recommended Order omitted from publication.]

[5] Greathouse said he had talked "generally" about the issue with Wyzard and also made the statement that "I told him we were going to use cameras on probable cause incidents," in conversations that occurred "whenever something like that comes up" and which "began at or about the time the camera was discovered in the fitness center." Dick, however, was the president then and Greathouse's statement is too vague, ambiguous, and self-serving to be a probative indication that Wyzard's failure to respond was a deliberate waiver of its right to bargain.